From:	LERS, EOIR (EOIR)
To:	LERS, EOIR (EOIR); All of Judges (EOIR); BIA BOARD MEMBERS (EOIR); BIA ATTORNEYS (EOIR); All of CLAD (EOIR); All of OCIJ JLC (EOIR); BIA TEAM JLC; BIA TEAM P (EOIR); Alder Reid, Lauren (EOIR); Allen, Patricia M. (EOIR); Anderson, Jill (EOIR); Baptista, Christina (EOIR); Bauder, Melissa (EOIR); Berkeley, Nathan (EOIR); Brazill, Caitlin (EOIR); Burgie, Brea (EOIR); Burgus, Elizabeth (EOIR); Carr, Donna (EOIR); Cicchini, Daniel (EOIR); Cowles, Jon (EOIR); Curry, Michelle (EOIR); Evans, Brianna (EOIR); Grodin, Edward (EOIR); Hartman, Alexander (EOIR); Kaplan, Matthew (EOIR); King, Jean (EOIR); Korniluk, Artur (EOIR); Lang, Steven (EOIR); Lovejoy, Erin (EOIR); Martinez, Casey L. (EOIR); Noferi, Mark (EOIR); O"Hara, Shelley M. (EOIR); Park, Jeannie (EOIR); Powell, Karen B. (EOIR); Ramirez, Sergio (EOIR); Rimmer, Phillip (EOIR); Robbins, Laura (EOIR); Rodrigues, Paul A. (EOIR); Rodriguez, Bernardo (EOIR); Rothwarf, Marta (EOIR); Sanders, John W. (EOIR); Schaaf, Joseph R. (EOIR); Smith, Terry (EOIR); Stutman, Robin M. (EOIR); Swanwick, Daniel (EOIR); Taufa, Elizabeth (EOIR); Vayo, Elizabeth (EOIR)
Cc:	McHenry, James (EOIR); Reilly, Katherine (EOIR); Santoro, Christopher A (EOIR); Sheehey, Kate (EOIR); Moutinho, Deborah (EOIR); Adams, Amanda (EOIR); Pease, Jeffrey (EOIR); Morgan, Kenosha (EOIR); Macri, Andrea (EOIR); EOIR Library (EOIR)
Subject:	Policy & Case Law Bulletin - August 10, 2018
Date:	Friday, August 10, 2018 6:38:39 PM

EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW
Office of Policy | Legal Education and Research Services Division

| Policy & Case Law Bulletin
August 10, 2018

Federal Agencies

DOJ

- BIA Issues Decision in Matter of Medina-Jimenez — EOIR

  27 I&N Dec. 399 (BIA 2018)

  The categorical approach does not govern whether violating a protection order under 237(a)(2)(E)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1227(a)(2)(E)(ii) (2012), renders an alien ineligible for cancellation of removal under section 240A(b)(1)(C) of the Act, 8 U.S.C. § 1229b(b)(1)(C) (2012); instead, Immigration Judges need only decide whether the alien has been convicted within the meaning of the Act and whether that conviction is for violating a protection order under section 237(a)(2)(E)(ii). Matter of Obshatko, 27 I&N Dec. 173 (BIA 2017), followed.

- BIA Issues Decision in Matter of Ortega-Lopez — EOIR

  27 I&N Dec. 382 (BIA 2018)

  (1) The offense of sponsoring or exhibiting an animal in an animal fighting venture in violation of 7 U.S.C. § 2156(a)(1) (2006) is categorically a crime involving moral turpitude. Matter of Ortega-Lopez, 26 I&N Dec. 99 (BIA 2013), reaffirmed. (2) An alien is ineligible for cancellation of removal under section 240A(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b)(1)(C) (2012), for having "been convicted of an offense under" section 237(a)(2)(A)(i) of the Act, 8 U.S.C. § 1227(a)(2)(A)(i) (2012), irrespective of both the general "admission" requirement in section 237(a) and the temporal (within 5 years of admission) requirement in section 237(a)(2)(A)(i)(I). Matter of Cortez, 25 I&N Dec. 301 (BIA 2010), reaffirmed.

- Virtual Law Library Weekly Update — EOIR

  This update includes resources recently added to EOIR's internal or external Virtual Law Library, such as Federal Register Notices, country conditions information, and links to recently-updated immigration law publications.

DHS

- USCIS Issues Revised Final Guidance on Unlawful Presence for Students and Exchange Visitors

  On August 9, 2018, USCIS issued a revised final policy memorandum "related to unlawful presence after considering feedback received during a 30-day public comment period that ended June 11, 2018. Under the revised final policy memorandum, effective Aug. 9, 2018, F and M nonimmigrants who fall out of status and timely file for reinstatement of that status will have their accrual of unlawful presence suspended while their application is pending."

- DHS Releases Fiscal Year 2017 Entry/Exit Overstay Report

  On August 7, 2018, DHS released the Fiscal Year (FY) 2017 Entry/Exit Overstay Report, which "provides data on departures and overstays, by country, for foreign visitors to the United States who entered as nonimmigrants through an air or sea Port of Entry (POE) and were expected to depart in FY 2017."

International

UN

- UN Draws Attention to Migration, Trans-Border Movement of Indigenous Peoples

  On August 7, 2018, the United Nations issued a press release regarding the 2018 International Day of the World's Indigenous Peoples. The UN quoted a joint statement of "more than 40 United Nations system entities and other international organizations," that "[i]t is important to highlight the need to protect indigenous migrants against all forms of violence and economic exploitation as a potential cause and consequence of migration."

D.C. Circuit

- NAACP v. Trump

  No. CV 17-1907 (JDB), 2018 WL 3702588 (D.D.C. Aug. 3, 2018) (DACA)

  The district court denied the government's motion to reconsider its April 24, 2018 order, and continued the stay of its order of vacatur for twenty days to permit the government to determine whether it intends to appeal the court's decision and, if so, to seek a stay pending appeal. In all other respects, the court's April 24, 2018 order remains in force. (In its April 24, 2018 decision, the court held that DHS's decision to rescind the Deferred Action for Childhood Arrivals (DACA) program was unlawful and set it aside. While the order of vacatur was stayed, DHS issued a memorandum (Nielsen Memo) providing "further explanation.") In its August 3, 2018 decision, the court determines that the Nielsen Memo "fails to elaborate meaningfully on the agency's primary rationale for its decision: the judgment that the policy was unlawful and unconstitutional." The court notes that it does not hold that DHS lacks statutory or constitutional authority to rescind the DACA program. Rather, it reiterates that if DHS wishes to rescind the program or take any other action, it must give a rational explanation for its decision.

  Note: On August 6, 2018, the Attorney General issued a statement "strongly disagree[ing]" with the court's decision and declaring that the Department "will take every lawful measure to vindicate [DHS's] lawful rescission of DACA."

First Circuit

- Lassend v. United States

  No. 17-1900, 2018 WL 3654433 (1st Cir. Aug. 2, 2018) (Crime of Violence; ACCA)

The First Circuit affirmed the district court, finding that Lassend's three prior convictions are ACCA predicates. Pursuant to its prior holding in United States v. Hudson, 823 F.3d 11 (1st Cir. 2016), the court determined that Mass. Gen. Laws ch. 265, § 15B(b) (assault with a deadly weapon) constitutes a violent felony under the ACCA's force clause. As to Lassend's convictions under New York Penal Law § 120.05(7) (attempted second-degree assault) and New York Penal Law § 160.15(4) (first-degree robbery), the court concluded that both offenses also qualify as violent felonies under the ACCA's force clause, 18 U.S.C. § 924(e)(2)(B)(i) (analogous to 18 U.S.C. § 16(a).

Third Circuit

- United States v. Johnson

  No. 11-1615, 2018 WL 3734212 (3d Cir. Aug. 7, 2018) (Crime of Violence)

  On remand from the Supreme Court, the Third Circuit held that Johnson's conviction for bank robbery under 18 U.S.C. § 2113(d), which increases the penalties where the offender "assault[s] any person, or put[s] in jeopardy the life of any person by the use of a dangerous weapon or device," is a crime of violence under 18 U.S.C. § 924(c)(3)(A) (analogous to 18 U.S.C. § 16(a)), because "[o]ne cannot assault a person, or jeopardize his or her life with a dangerous weapon, unless one uses, attempts to use, or threatens physical force."

Fourth Circuit

- Shaw v. Sessions

  No. 17-1213, 2018 WL 3732551 (4th Cir. Aug. 7, 2018) (Evidence; Conspiracy)

  The Fourth Circuit denied the PFR, holding that the Board correctly determined that Shaw was inadmissible under section 212(a)(2)(A)(i)(II) of the Act and, therefore, removable under section 237(a)(1)(A) of the Act, because his conspiracy conviction related to a controlled substance. The court concluded that the Board properly followed its own precedent in Matter of Beltran, 20 I&N 521 (BIA 1992), by applying the categorical approach to the statute Shaw conspired to commit. The Board properly considered the indictment to learn the object of the conspiracy even though it is not a document listed in section 240(c)(3)(B) of the Act. Finally, the Court determined that it lacked jurisdiction to consider Shaw's argument that the indictment was unreliable because he had not previously raised the issue. One judge dissented from the majority's determination that the court lacked jurisdiction to consider Shaw's evidentiary challenge.

Fifth Circuit

- United States v. Ramos

  No. 16-41483, 2018 WL 3715591 (5th Cir. Aug. 3, 2018) (per curiam) (unpublished) (Crime of Violence)

  On remand from the Supreme Court post-Dimaya, the Fifth Circuit affirmed the district court. Relying on previous decisions where the circuit held that "a Texas aggravated assault conviction has the use of force as an element under virtually identical provisions" in the ACCA and U.S.S.G § 4B1.2, the panel determined that Ramos's conviction under Texas Penal Code § 22.02 (aggravated assault) qualifies as a crime of violence under 18 U.S.C. § 16(a) (elements clause).

- Singh v Sessions

No. 17-60320, 2018 WL 3668979 (5th Cir. Aug. 2, 2018) (Asylum; Burden of Proof)

The Fifth Circuit granted the PFR, holding that DHS did not carry its burden of establishing that Singh, who suffered past persecution, was both safely able to relocate within India to avoid further persecution and that it was reasonable for him to do so. DHS produced no evidence on this issue despite the fact that it bore the burden of proof, and, as a result, the IJ and the BIA relied exclusively on record evidence produced by Singh—both documentary and non-documentary evidence. The court determined that substantial evidence did not support the IJ's conclusion that DHS rebutted the regulatory presumption that Singh possessed a well-founded fear of future persecution.

Eighth Circuit

- Rivas v. Sessions

No. 17-1123, 2018 WL 3748514 (8th Cir. Aug. 8, 2018) (Asylum-Derivative Applications)

The Eighth Circuit denied the PFR for Rivas, but granted the PFR for her children. The court concluded with respect to Rivas's petition that there was no legal error and that substantial evidence supports the Board's decision. As to her children, however, the court determined that the IJ mistakenly concluded that the children had not submitted independent applications, and therefore did not analyze or reach a decision on their independent claims. The Board, too, overlooked that the children pursued an independent ground for relief and failed to conduct an individualized assessment of the children's independent claims. The case was remanded for further proceedings on the children's applications.

Ninth Circuit

- Alvarez-Cerriteno v. Sessions

No. 16-73486, 2018 WL 3748663 (9th Cir. Aug. 8, 2018) (Child Abuse)

The Ninth Circuit granted the PFR, holding that the Board erred in finding Alvarez-Cerriteno removable under section 237(a)(2)(E)(i) of the Act for his 2011 conviction under Nev. Rev. Stat. § 200.508(2)(b)(1) (child abuse and neglect). The court determined that Nevada's child neglect statute is broader than the generic "crime of child abuse" under the Act because the Nevada statute outlaws conduct that presents a lesser risk of harm to a child ("reasonably foreseeable" harm) than does the conduct required to violate the Act (at least a "reasonable probability" of harm).

- Gonzalez-Dominguez v. Sessions

No. 15-72814, 2018 WL 3653731 (9th Cir. Aug. 2, 2018) (unpublished) (Aggravated Felony; Controlled Substances)

The Ninth Circuit denied the PFR, affirming the Board's decision that Gonzalez-Dominguez was ineligible for cancellation of removal because his conviction for conspiracy under Ariz. Rev. Stat § 13-1003 to transport dangerous drugs for sale under Ariz. Rev. Stat. § 13-3407(A)(7), is an aggravated felony under sections 101(a)(43)(B) and (U) of the Act. First, the court determined that Ariz. Rev. Stat. § 13-1003 (conspiracy), is a categorical match to the generic federal definition of conspiracy under the Act. Second, the court agreed with DHS that Ariz. Rev. Stat. § 13-3407(A)(7) is overbroad but divisible as to the actus reus element. Finally, in the absence of controlling state law and clear statutory language, based on a peek at the conviction record, the court concluded that the dangerous drug component under Ariz. Rev. Stat. § 13-3407(A)(7) is divisible. Applying the modified categorical approach, the court determined that Gonzalez-Dominguez was convicted of conspiracy to transport for sale methamphetamine, which constitutes an aggravated felony under the Act.

Tenth Circuit

- Lopez v. Sessions

  No. 17-9517, 2018 WL 3730137 (10th Cir. Aug. 6, 2018) (unpublished) (Asylum; Particular Social Group)

  The Tenth Circuit denied the PFR, agreeing with the Board's determination that Lopez did not demonstrate she was a member of the proposed social group of "Salvadoran women unable to leave domestic relationships." Furthermore, she was unable to show that "Salvadoran women who refuse to be in domestic relationships with gang members" or "Salvadoran women who refuse to be victims of gang members' sexual predation" were socially distinct. The court further denied the Harvard Immigration and Refugee Clinical (HIRC) Program's request to appear as amicus curiae to argue that Lopez's particular social group was defined by her gender. One judge concurred, and another judge dissented. The dissenting judge stated that "in the interests of justice, I would consider the arguments raised in HIRC's amicus brief and grant relief to [Lopez] on that basis."